was in fact a possible cause of the damage. It has not therefore yet been held that breach of a condition precedent avoids the express limitations of liability, when the damage would have occurred if the condition had not been broken.

CHATTEL MORTGAGES — AFTER ACQUIRED PROPERTY — RIGHT TO OFFSPRING OF MORTGAGED ANIMALS. — The plaintiff claimed that a chattel mortgage of certain cows included the calves in gestation at the time the mortgage was executed, there being no reference in the mortgage to the increase. *Held*, that the mortgage gives only a lien, which does not attach to the calves. *Demers* v. *Graham*, 93 Pac. 268 (Mont.).

The general rule is that a chattel mortgagee has title, and so a mortgage on animals covers the increase, though not mentioned in the mortgage, on the principle *partus sequitur ventrem*. See 16 HARV. L. REV. 442. This rule weakens the effect of the recording laws, since an examination of the mortgage gives no actual notice of its extent. But in the few states where by statute or decision a chattel mortgage gives only a lien, it is often possible to change a result based on the mortgagee's title. Thus, contrary to the result in states passing title to the mortgagee, a tender of the amount due on a note, though made after maturity, discharges the lien on the chattel mortgage security. *Moore* v. *Norman*, 43 Minn. 428; *cf. Noyes* v. *Wyckoff*, 30 Hun (N. Y.) 466. So too the court is free to construe the lien as limited to the property actually described. The contrary view is a possible construction. *First Nat'l Bank* v. *Western Mtge., etc., Co.*, 86 Tex. 636. Thus a pledge is said to cover the increase. See JONES, PLEDGES, § 32. The view of the present case, however, is preferable, as it carries out the spirit of the registry laws. *Shoobert* v. *De Motta*, 112 Cal. 215.

CONFLICT OF LAWS — LEGITIMACY AND ADOPTION — LEGITIMATION SUBSEQUENT TO BIRTH. — A New York man deserted his wife and purported to marry a New Jersey woman, who bore him two children. Thereafter he became domiciled with his family in Michigan, obtained a divorce there from his New York wife by default without personal service, and went through a second marriage ceremony with the New Jersey woman. This divorce and remarriage a New York court by decree refused to recognize. By Michigan law illegitimate children become legitimate by the subsequent marriage of their parents. The children claimed New York realty under a devise as the "lawful issue" of their father. *Held*, that they are not entitled to the property. *Olmsted* v. *Olmsted*, 190 N. Y. 458.

For a criticism of this case in the lower court, see 20 HARV. L. REV. 400.

CONSIDERATION — THEORIES OF CONSIDERATION — ACCORD AND SATISFACTION BY PART PAYMENT. — The plaintiff in a suit for the balance of a note admitted that several partial payments had been made by the defendant. It was inferable that the defendant was insolvent when the last partial payment was made, and possible that she had consented to the sale of certain land. *Held*, that it was error to charge that an agreement to accept the payments in full satisfaction is no defense. *Frye* v. *Hubbell*, 68 Atl. 325 (N. H.).

Although this case may not squarely involve the doctrine formerly established in New Hampshire that an accord and satisfaction by payment of less than the whole debt is not valid, yet it is certainly intended to annul that doctrine and does not rest on any exception to be made on account of the insolvency of the debtor. Reliance is placed upon the general reluctant expressions of assent to the overruled doctrine and upon the argument of Professor Ames that it is unjust and arose in England through a misunderstanding. See *Foakes* v. *Beer*, 9 App Cas. 605; 12 HARV. L. REV. 515; 13 *ibid.* 29. The various views of the nature of consideration are discussed in 8 HARV. L. REV. 27; 14 *ibid.* 496; 17 *ibid.* 71.

CONSTITUTIONAL LAW — CLASS LEGISLATION — ACT ALLOWING PRIVATE CLAIM AGAINST STATE. — Article III, § 19, of the Constitution of New York provides that the legislature shall not "allow any private claim against the

state." The state conveyed land to the plaintiff for value by letters patent, which, by express terms, should "in no case operate as a warranty of title." The title proving invalid, a special enactment conferred jurisdiction on the Court of Claims to determine the plaintiff's claim for damages and to enter judgment therefor. *Held*, that the enactment is constitutional although it authorizes a judgment for the plaintiff notwithstanding the lack of warranty. *Wheeler* v. *State of New York*, 190 N. Y. 406.

This decision affirms the decision of the lower court, commented upon in 18 HARV. L. REV. 465.

CONSTITUTIONAL LAW — PERSONAL RIGHTS — ACT REQUIRING WEEKLY PAYMENT OF EMPLOYEES OF CORPORATION IN MONEY. — A statute required corporations engaged in certain enumerated classes of business to pay their employees in money each week. *Held*, that the statute is constitutional. *Lawrence* v. *Rutland R. Co.*, 67 Atl. 1091 (Vt.).

The court seemingly relies on the state's reserved power to alter corporate charters, though it also mentions the quasi-public character of the corporations involved. The constitutionality of such legislation has been the subject of much conflict. It has been upheld variously as an exercise of the reserved power to amend, or of the broader police power. *State* v. *Browne, etc., Mfg. Co.*, 18 R. I. 16; *Opinion of the Justices*, 163 Mass. 589; *contra, Republic Iron & Steel Co.* v. *State*, 66 N. E. 1005 (Ind.). In reality the considerations justifying the exercise of these two powers seem the same; both, in essence, look to the interest of the public. The liberty to contract is fundamental, but it is neither absolute nor universal; in a conflict, inevitable at times, with the public welfare, the latter, if clear, is paramount. See *Frisbie* v. *United States*, 157 U. S. 160, 165. And it is not inconceivable that a "weekly payment" act, or a "truck" act, or a combination of the two, as in the present case, may be necessary because of local industrial conditions. See 19 HARV. L. REV. 62. That, of course, is a question of fact, and the sole concern of the court is with the reasonableness of the legislative determination of this question in the light of the conflict of rights.

CONSTITUTIONAL LAW — WHO MAY SET UP UNCONSTITUTIONALITY — OFFICIAL INTEREST NOT SUFFICIENT TO RAISE FEDERAL QUESTION. — A county court refused to assess a tax in accordance with a state statute. In *mandamus* proceedings the highest court of the state declared the statute to be constitutional. The county court appealed to the United States Supreme Court. *Held*, that since the interest of the appellant is official and not personal there is no federal question involved. *Braxton County Court* v. *West Virginia*, 208 U. S. 192. See NOTES, p. 438.

CONTEMPT — POWER TO PUNISH FOR CONTEMPT — POWER OF APPELLATE COURT TO PUNISH VIOLATION OF INJUNCTION PENDING APPEAL. — Pending an appeal from a judgment of the lower court granting a perpetual injunction, the defendant violated the decree. *Held*, that the appellate court is the proper tribunal to punish the contempt. *Menuez* v. *Grimes Candy Co.*, 83 N. E. 82 (Oh.).

When an appeal is taken from a decree of the lower court dissolving an injunction and the upper court grants a *supersedeas* operating as a revival of the injunction, it has been held that the upper court should punish violations thereof. *State* v. *Bridge Co.*, 16 W. Va. 864. In that case it is the upper court which makes the injunction operative. But when a perpetual injunction has been granted in the lower court, the perfecting of an appeal, according to the great weight of authority, does not destroy the operative force of the injunction. *Leonard* v. *Ozark Land Co.*, 115 U. S. 465. Pending such an appeal the upper court merely leaves the decree of the lower court in full force. *State* v. *Harness*, 42 W. Va. 414. By the appeal the lower court is merely deprived of the power to take further affirmative action. See *Sixth Ave. R. Co.* v. *Gilbert El. R. Co.*, 71 N. Y. 430. It may still take steps necessary to preserve the *status quo*. *Hinson* v. *Adrian*, 91 N. C. 372. Hence it would seem that,